



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/505,619	02/16/2000	Ronald A. Katz	251/002	6020

29129 7590 02/02/2005

ROCCO L. ADORNATO
C/O WEST CORPORATION
11808 MIRACLE HILLS DR.
MAIL STOP: W11-LEGAL
OMAHA, NE 68135

EXAMINER

GARG, YOGESH C

ART UNIT	PAPER NUMBER
----------	--------------

3625

DATE MAILED: 02/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/505,619

Applicant(s)

KATZ ET AL.

Examiner

Yogesh C Garg

Art Unit

3625

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 November 2004.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 172-177 and 179-219 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 172-177 and 179-219 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 9/7/04 & 11/15/04.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

1. The applicant's amendment received on 11/29/2004 is acknowledged and entered. The applicant has amended claims 172, 198, 202, 212 and 216-219 and canceled claim 178. Currently claims 172-177 and 179-219 are pending for examination.

Response to Arguments

2.1. Applicant's arguments, (see Remarks, page 14), filed on 11/29/2004 with respect to rejection of claim 178 under 35 U.S.C. 112, first and second paragraphs have been fully considered and are persuasive in view of the cancellation of claim 178. The rejection of claim 178 under 35 U.S.C. 112, first and second paragraphs has been withdrawn.

2.2. Applicant's arguments [see Remarks, pages 14-16] with respect to rejection of claims 172 and 195 under 35 USC 103 (a), have been considered but are moot in view of the new ground(s) of rejection necessitated due to amendment to claim 172..

2.3. Regarding rejection of claims 184-188 under 35 USC 103 (a) as being obvious over Lynch/Joseph/Walker/Kurtzman and further in view of Official Notice, the applicant has neither traversed the facts and benefits of the Official Notice, taken by the examiner, adequately nor asked for a documentary evidence. Therefore, as per *MPEP-2144.03 [R-1] C Reliance on Common Knowledge in the Art or "Well Known" Prior Art* -, the common knowledge or well-known fact considered as Official Notice in the art statement is taken to be admitted prior art.

3. Examiner cites particular columns and line numbers in the references as applied to the claims below for the convenience of the applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the

Art Unit: 3625

individual claim, other passages and figures may apply as well. It is respectfully requested that, in preparing responses, the applicant fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the examiner.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4.1. Claim 172-177, 179-183, 189-195, 200-202, 208-214, and 219 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lynch in view of Joseph in view of Walker (US Patent '458) and further in view of Kurtzman, II et al. (US Patent 6,014,634); hereinafter, referred to as Kurtzman.

Regarding claim 172, Lynch teaches a method for providing offers of an item constituting a good or a service to prospective customers as users of the system, utilizing an electronic communications device (see at least abstract. Lynch offers travel-related products and services via a communication device) comprising the steps:

establishing a communication via the electronic communication device between the user and the system for purpose of a primary transaction for a first good or service (see at least Figs 1, 2, 3 "104- Receive Travel Request Information" and col.4, lines 13-18 show receiving a

Art Unit: 3625

request for the purpose of a primary transaction of knowing information about a travel related product/service or purchasing a travel related product/service);

obtaining primary transaction data with respect to the primary transaction, including the identity of the prospective customer and of the purpose of the primary transaction, utilizing the identity of the prospective customer to obtain at least a second data element relating to the user, utilizing in part the primary transaction data including the purpose of the primary transaction and the second data element (see at least col.5, lines 7- col.8, line 44, wherein Lynch discloses receiving primary transaction data, such as dates of travel, requirement of hotel services, automotive rental, etc for the primary transaction of submitting a response to the customer's request for a proposed travel itinerary, utilizing the identity of the customer and obtaining a second data element, such as the traveler's preferences for air carriers, automotive rental agencies, etc. and then utilizes the primary transaction data and the second data element to determine and generate a recommended travel plan.);

Lynch does not disclose determining at least one alternative/replacement item to the prospective customer which is different from the first good or service and offering the item to the prospective customer in lieu of the first good or service. However, in an analogous field of endeavor, Joseph teaches determining at least one alternative item to the prospective customer which is different than the first good or service and offering the item to the prospective customer in lieu of the first good or service (see at least col.2, lines 15-43, "*The means for determining the alternative items that are available includes a computer controller that determines from the inventory database the items that are available for each alternative item. The means for interactively displaying the alternative items includes mass data storage means, which stores an image of each alternative item, with the computer controller displaying each desired alternative item on the computer workstation.*"). In view of Joseph, it would have been obvious to one of an ordinary skill in the art at the time of the applicant's invention to have modified Lynch to incorporate the

Art Unit: 3625

feature of determining at least one alternative item to the prospective customer which is different than the first good or service and offering the item to the prospective customer in lieu of the first good or service because of the following:

(a) it would help the Lynch's system to offer alternative travel related products and services if the originally requested travel-related, such as airline flight schedules, lodging bookings or budget constrained vacation packages are not available, thereby adding more revenues and profits if the alternative item is accepted by the customer.

(b) saving the customer from additional burden, frustration and disappointment by allowing him the choice to select an alternative if it is acceptable to him.

Lynch in view of Joseph as applied to claim 1 does not teach that the alternative item is an upsell item. However, Walker in the field of same endeavor that is marketing, teaches that the alternative item is an upsell item (see at least col.2, lines 45-53, *"to offer and sell products complementary to previously-purchased products to the account holder....offered product be related to previous purchases "*). In view of Walker, it would have been obvious to one of an ordinary skill in the art at the time of the applicant's invention to have modified Lynch in view of Joseph as applied to claim 172 above to incorporate the feature of offering alternative item as a prospective upsell because it will help Lynch in view of Joseph as applied to claim 1 to sell travel-related products of other vendors than requested by the customer and to help increase the revenues and profits of the vendors.

Lynch/Joseph/Walker/Kurtzman as applied to claim 172 and analyzed above discloses offering an upsell item in lieu of first good or service. Lynch further discloses the step of offering items, in real time during the primary transaction (see Lynch at least col.4, lines 25-65, FIG.1 and FIG.2 which disclose a computer based system 24 implementing the automated travel planning system via local or wide area networks which let users interact online with the

Art Unit: 3625

system in real time), which in view of above analysis and combining the prior arts of Joseph and Walker would also include the offering of upsell item in lieu of first good or service. Lynch does not disclose the step of determining the prospective upsell in real time with the primary transaction. However, in the analogous field of conducting electronic commerce and targeting advertisements for promoting sale of items, falling in class 705/26 and related class 705/14, Kurtzman teaches the step of determining a prospective advertisement to be displayed to the user in real time when the user sends a request to a web server (see at least col.1, line 43- col.2, line 20, “ *On the World Wide Web (or web), advertisers can target specific markets with more discrimination than other media. The information presented to the user is dynamically generated so advertisers can select an appropriate advertisement in real time for that specific user. Thus, the manner in which content is presented on the web means that advertisers can reach increasingly defined segments of the market. For example, a high percentage of people who access a stock quotes web page may be interested in a stock broker. A stock broker who places an advertisement on this web page may reach a smaller group of people, but a much higher percentage of this group will be potential customers. This is in stark contrast to other media such as newspaper and television, in which the target market may only be a small percentage of the total market reached.....* “). Note: The prior art as disclosed in Kurtzman is reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Kurtzman is faced with the problem of immediately determining an appropriate content related to selling goods/service to a user and displaying the same to the user, when the user sends a query to a web server and this problem is similar to the problem faced by the applicant, that is determining a upsell item immediately when the customer is conducting a business for a primary item. In Kurtzman, sending a query for information to the web server corresponds to conducting a primary transaction and determining an appropriate advertisement for promotion of selling

Art Unit: 3625

products/services to be displayed to the user corresponds to determining a prospective upsell item. In both the cases the problem is solved by presenting the advertisement in real time while the user is online waiting for a response from a web server in response to his query [Kurtzman] and by presenting an appropriate upsell item in real time while the user is conducting a transaction [Instant application]. In view of Kurtzman, it would be obvious to one of an ordinary skill in the art at the time of the applicant's invention to have modified Lynch/Joseph/Walker as applied to claim 172 to incorporate the feature of determining the prospective upsell in real time with the primary transaction because, as explicitly suggested in Kurtzman, not to let the customer wait and thereby losing the opportunity to present upsell items/advertisements to the customers.

Regarding claims 173-177, Lynch/Joseph/Walker/Kurtzman as applied to claim 172 does not teach that the upsell transaction is either different from the primary transaction like if upsell is a service transaction and primary transaction is a purchase transaction or both upsell and primary are same transactions or upsell transaction is a replacement transaction for the good purchased in the primary transaction. However, Walker teaches the same in the analogous field of marketing (see at least Walker FIGS. 1-7, col.1, lines 59-63, "*...provide methods and systems using automated, predetermined criteria...upsell offers for products..*", col2, lines 56-67, "*.....to offer and sell products complementary to previously-purchased products to the account holder....offered product be related to previous purchases....*", col.3, lines 4-19, "*....for example, an account holder may buy a television,it is more convenient for the account holder to accept an offer.....for a warranty...*", col.5, lines 8-20, "*.....Many types of upsells may be offered....for example, a warranty on a television.....*", col.5, line 26-col.6, line 7, "*..The central controller 12 determines upsells to offer each account holder based on previous transactions by the account holder.....*", col.7, line 66-

Art Unit: 3625

col.8, line 63, "...*upsell offer is printed.....provided to the account holder.....upsell was accepted...*", col.9, lines 35-42, "...*those skilled in the art will understand that various substitutions may be made to those embodiments.....a great number of types of upsells and methods of providing those upsells will be apparent to those skilled in the art* "). In view of Walker, it would have been obvious to one of an ordinary skill in the art at the time of the applicant's invention to have modified Lynch/Joseph/Walker/Kurtzman as applied to claim 172 above to incorporate the missing features , as explicitly disclosed in Walker because it will help Lynch/Joseph/Walker/Kurtzman as applied to claim 172 to sell travel-related products/services of other vendors or additional products of the same vendor than requested by the customer and to help increase the revenues and profits for the vendors.

Regarding claims 179-183, Lynch/Joseph/Walker/Kurtzman further discloses that the primary transaction could be: not consummated, a purchase transaction, a service transaction, a sale transaction, an informational enquiry and (see at least Lynch col.8, lines 19-27, which discloses booking arrangements that meet the requirements of the itinerary and this corresponds to a purchase transaction for the buyer, a sales transaction for the seller. It also includes service related transactions such as, transactions for automotive rentals, hotel bookings. Col.4, lines 13-24 further discloses receiving a travel request information, this corresponds to the claimed informational enquiry, and that consummation occurs if the recommendations fall within parameters of travel itinerary which implies that if they do not match the parameters of travel itinerary the primary transaction will not be consummated.).

Regarding claims 189 –194, Lynch/Joseph/Walker/Kurtzman as applied to claim 172 teaches a method for providing offers of an item constituting a good or a service to prospective

Art Unit: 3625

customers as disclosed and analyzed above. Lynch/Joseph/Walker/Kurtzman further discloses utilizing time as a factor in determining the goods or service to be offered, wherein the time is the time of the day/day of the week/day of the month/proximity to a calendar event which is user defined (see at least col.5, lines 21-30. In the field of traveling, utilizing time as a factor in determining the goods or service to be offered is very well known, such as when purchasing vacation packages/airline tickets/hotel bookings, restaurants bookings.

Regarding claim 195, Lynch/Joseph/Walker/Kurtzman discloses offering the item in real time during the primary transaction (see Lynch at least col.4, lines 25-65, FIG.1 and FIG.2 which disclose a computer based system 24 implementing the automated travel planning system via local or wide area networks which let users interact online with the system in real time).

Regarding claims 200 and 201, their limitations are already covered in claim 172 while analyzing the limitations, "utilizing at least in part the primary transaction data....".

Regarding claim 202, its limitations are already covered in claim 172 while utilizing the limitation, " *...utilizing the identity of the prospective customer to obtain at least a second data element relating to the user*". Lynch's invention considers the user's preferences, such as type of airline, hotels, airplane seats and they correspond to the quality of goods/services.

Regarding claims 208-211, Lynch/Joseph/Walker/Kurtzman as applied to claim 172 teaches a method for providing offers of an item constituting a good or a service to prospective customers utilizing an electronic device as disclosed and analyzed above.

Lynch/Joseph/Walker/Kurtzman further disclose that the prospective customer registers to use

Art Unit: 3625

the system/preregisters with the system prior to use/ wherein the registration includes input of information by the prospective customer/wherein the prospective customer inputs information in response to questions (see at least Lynch, col.1, lines 61-col.2, line 15, col.3, lines 38-47).

Regarding claims 212, 213, and 214, Lynch/Joseph/Walker/Kurtzman further discloses at least one negative rule when the at least one item for prospective upsell to the prospective customer is determined and the negative rule includes not offering for up sell an item determined to already be possessed/purchased by the prospective customer (see at least Lynch col. 3, line 63-col.4, line 13 which discloses that while generating a response to the customer's travel information request the system also determines that the recommended plan is consistent and conform to the business entity portfolio information. Also see Walker, col2, lines 56-67, *".....to offer and sell products complementary to previously-purchased products to the account holder.....offered product be related to previous purchases....."*, col.3, lines 4-19, *".....for example, an account holder may buy a television,it is more convenient for the account holder to accept an offer.....for a warranty...."*, col.5, lines 8-20, *".....Many types of upsells may be offered....for example, a warranty on a television....."*. Note: Offering products different from previously purchased products like warranty for previously purchased television corresponds to the negative rule not including an offering already possessed or previously purchased.).

Regarding claim 219, Lynch/Joseph/Walker/Kurtzman as applied to claim 172 further discloses that the electronic communications device is a computer (see at least Lynch, FIG.1, FIG.2, " 34", and col.4, lines 25-65).

4.2 Claims 184-188 are rejected under 35 U.S.C. 103(a) as being obvious over Lynch/Joseph/Walker/Kurtzman as applied to claim 172 in view of Official Notice.

Art Unit: 3625

Regarding claims 184-188, Lynch/Joseph/Walker/Kurtzman as applied to claim 172 teaches a method for providing offers of an item constituting a good or a service to prospective customers utilizing an electronic device as disclosed and analyzed above.

Lynch/Joseph/Walker/Kurtzman does not disclose that the primary purpose of the primary transaction is an inventory check/ a status inquiry an order fulfillment inquiry/ a comparison shopping inquiry/ and a credit check. Official Notice is taken of both the old and well known concepts and benefits of seeking an inventory check/ a status inquiry /an order fulfillment inquiry/ a comparison shopping inquiry/ and a credit check for the obvious reason of knowing if the goods or services are available, if the pending order is completed or when it will be delivered, to get the best available, and to know how if the goods can be purchased by using the credit cards. In view of the Official Notice it would be obvious to a person of an ordinary skill in the art at the time of the invention to have modified Lynch/Joseph/Walker/Kurtzman to include the old and well-known features of seeking an inventory check, i.e. an availability check/ a status inquiry /an order fulfillment inquiry/ a comparison shopping inquiry/ and a credit check for the obvious reason of knowing if the goods or services are available, if the pending order is implemented or when it will be delivered, to get the best available, and to know how if the goods can be purchased by using the credit cards.

4.3. Claims 196-199 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lynch/Joseph/Walker/Kurtzman in view of Pocock (US Pub. 2002/0023272 A1).

Regarding claims 196-199, Lynch/Joseph/Walker/Kurtzman as applied to claim 172 teaches a method for providing offers of an item constituting a good or a service to prospective customers utilizing an electronic device as disclosed and analyzed above.

Lynch/Joseph/Walker/Kurtzman does not disclose using geographic identifier data of the user to

Art Unit: 3625

offer a good or service wherein the geographic identifier is provided automatically/by a carrier associated with the electronic communication device and the geographical identifier data is entered by the user. However, in the same field of electronic commerce, Pocock teaches using geographic identifier data of the user to offer a good or service wherein the geographic identifier is provided automatically/by a carrier associated with the electronic communication device and the geographical identifier data is entered by the user (see at least paragraphs 0014 and 0016 on page 2. Pocock discloses here that the geographical identifier data of the user is provided automatically from the area code of the telephone number entered by the user or supplied by the telephone company's [ANI]...to enable the programmed data processor to select the programmed schedule and the related information about the song which is to be offered and purchased by the customer.). In view of Pocock it would be obvious to a person of an ordinary skill in the art at the time of the invention to modify Lynch/Joseph/Walker/Kurtzman as applied to claim 172 to include the feature of using geographic identifier data of the user to offer a good or service wherein the geographic identifier is provided automatically/by a carrier associated with the electronic communication device and the geographical identifier data is entered by the user because it will help to identify the location of the user and using that information to provide discounted coupons and upsells for those goods and services which are available in the user's close vicinity.

4.4 Claims 203-207 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lynch/Joseph/Walker/Kurtzman and further in view of Kenney (US Patent 6,381,583).

Regarding claims 203-207, Lynch/Joseph/Walker/Kurtzman as applied to claim 172 teaches a method for providing offers of an item constituting a good or a service to prospective customers utilizing an electronic device as disclosed and analyzed above.

Art Unit: 3625

Lynch/Joseph/Walker/Kurtzman as applied to claim 172 does not disclose that the offer is made orally/visually/visual offer includes a virtual reality display/visual offer is static or dynamic.

However, Kenney teaches that the offer is made orally (see Kenney col.3, lines 5-9, "...advertisement including audio information", and col.10, lines 24-28, ".audible information can also be provided...", /visually/visual offer includes a virtual reality display/visual offer is static or dynamic (see at least col.6, line 60-col.29, "...display means 12 causes the displayed video image to change at the shopper's command to correspond to what the shopper would see.....allow the shopper to interact with the display of one aisle of the grocery store 2...."). In view of Kenney it would be obvious to a person of an ordinary skill in the art at the time of the applicant's invention to modify Lynch/Joseph/Walker/Kurtzman as applied to claim 172 to incorporate the features of Kenney that the offer is made orally/visually/visual offer includes a virtual reality display/visual offer is static or dynamic as explained above for the obvious reason of letting the customer have the feeling of shopping as face to face, examine the individual offered items and make a selection, as explicitly stated in Kenney (see at least col.1, lines 30-48) and thereby making the user's shopping experience fast and convenient and at the same time enabling the merchants to increase sales, and profits economically and efficiently.

4.5. Claim 215 is rejected under 35 U.S.C. 103(a) as being unpatentable over

Lynch/Joseph/Walker/Kurtzman as applied to claim 212 and further in view of Bernard et al. (US Patent 5,918, 213), hereinafter, referred to as Bernard.

Regarding claim 215, Lynch/Joseph/Walker/Kurtzman as applied to claim 212 teaches a method for providing offers of an item constituting a good or a service to prospective customers utilizing an electronic device and using at least one negative rule when the at least one item for prospective upsell to the prospective customer is determined as disclosed and analyzed above.

Art Unit: 3625

Lynch/Joseph/Walker/Kurtzman does not disclose that the negative rule includes not offering an item determined to have been previously offered to the prospective customer but declined.

However, in the same field of electronic commerce, Bernard teaches that the negative rule includes not offering an item determined to have been previously offered to the prospective customer but declined (see at least claim 1, col. 61, line 48-col.62, line 11, "*.... means for determining an abusive status of the customer..... means for defining a predetermined abusive user status time limit.....wherein said limiting usage includes disconnecting the abusive customer from the product system after said customer has been connected to said product system for said abusive user status time limit....*". Note: Disconnecting the user who does not purchase when he is offered

items to purchase corresponds to applying negative rule of not offering an item to a user who has previously declined to purchase the items.). In view of Bernard, it would have been obvious to a person of an ordinary skill in the art at the time of the invention to modify

Lynch/Joseph/Walker/Kurtzman as applied to claim 212 to incorporate the feature of applying negative rule of not offering an item to a user who has previously declined to purchase the items because to avoid wasting the resources in attempting to sell products to a user who is not interested in them.

4.6. Claims 216-217 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lynch/Joseph/Walker/Kurtzman as applied to claim 172 and further in view of Tagawa (5,732,398).

Regarding claims 216-217, Lynch/Joseph/Walker/Kurtzman as applied to claim 172 teaches a method for providing offers of an item constituting a good or a service to prospective customers utilizing an electronic device as disclosed and analyzed above.

Lynch/Joseph/Walker/Kurtzman does not disclose that the prospective customer interacting with a live operator, and that the electronic device is a telephone. However, in the same field of

Art Unit: 3625

providing travel related products/services, Tagawa discloses that a prospective customer can interact with a live operator, and that the electronic device is a telephone (see col.2, lines 1-5, col.8, lines 43-47 and FIG.1, " 34"...."). In view of Tagawa, it would have been obvious to a person of an ordinary skill in the art at the time of the invention to modify Lynch/Joseph/Walker/Kurtzman as applied to claim 172 to incorporate the feature of a prospective customer interacting with a live operator, and that the electronic device is a telephone because talking to a live operator over telephone can resolve issues, such as rectifying errors made while using automated computer system, t refunds or any other complex issues not resolved by the automated system.

4.7. Claim 218 is rejected under 35 U.S.C. 103(a) as being obvious over Lynch/Joseph/Walker/Kurtzman as applied to claim 172 and further in view of Gerszberg et al. (US Patent 5, 970,473), hereinafter, referred to as Gerszberg.

Regarding claim 218, Lynch/Joseph/Walker/Kurtzman as applied to claim 172 teaches a method for providing offers of an item constituting a good or a service to prospective customers utilizing an electronic device as disclosed and analyzed above. Lynch/Joseph/Walker/Kurtzman does not disclose that the electronic device is a videophone. However, in the same field of electronic commerce, Gerszberg discloses using videophone providing an interface for purchasing goods and services online (see at least col.1, lines 5-8, FIG.1 "*130-Videophone*", col.4, lines 20-25, "...*digital phone 18 and/or videophone 130..*"). In view of Gerszberg, it would be obvious to a person of an ordinary skill in the art at the time of the invention to modify Lynch/Joseph/Walker/Kurtzman as applied to claim 172 to incorporate the feature of Gerszberg to use videophone to communicate with the shopping facility for the obvious reason of enabling

Art Unit: 3625

the user to view the person with whom he is speaking as explicitly disclosed in Gerszberg (see at least col.6, lines 44-60).

Conclusion

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

(i) US Patent 6,014,634 to Scroggie et al. (see at least col.10, line 26-42 and col.14, lines 46-50) discloses determining an appropriate award in real time [it corresponds to a product] and presenting via a communication network that to the user while he is shopping.

(ii) US Patent 6,134,532 to Lazarus et al. (see at least Abstract and col.4, lines 48-53) discloses determining an award in real time [it corresponds to a product] and presenting via a communication network that to the user while he is online.

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Art Unit: 3625

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yogesh C Garg whose telephone number is 703-306-0252. The examiner can normally be reached on M-F(8:30-4:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wynn Coggins can be reached on 703-308-1344. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Yogesh C Garg
Primary Examiner
Art Unit 3625

YCG
January 25, 2005